

**CITY COUNCIL OF THE CITY OF SAN DIEGO
SUPPLEMENTAL DOCKET NUMBER 3
FOR THE REGULAR MEETING OF
TUESDAY, JULY 19, 2005 AT 10:00 A.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

**ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
RESOLUTIONS:**

ITEM-S501: Waiver of Attorney-Client Privilege and the Work Product Doctrine.

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-)

Declaring that the protections of the Attorney-Client Privilege and the Work Product Doctrine are waived as to the reports prepared for the City by the law firm Procopio Cory Hargreaves & Savitch relating to the City’s defense obligations for defendants named in the People v. Grissom, et al action and the separate Cross-Complaint action related to the San Diego City Employees’ Retirement System which have been brought by the City Attorney.

Directing the City Attorney to prepare the necessary Resolution associated with the action.

CITY MANAGER SUPPORTING INFORMATION:

From time to time the City Council has waived the Attorney-Client privilege and the protection of the Attorney Work-Product Doctrine with respect to certain materials. This may be done in order to respond to subpoenas or requests for documents or information.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S501: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

The City Attorney has filed two civil complaints on matters related to the San Diego City Employees' Retirement System; People v. Grissom, et al (Case No. GIC 850246) and a Cross-Complaint action involving the Board of Administration of the Retirement System (Case No. GIC841845).

Defendants named in these actions have tendered requests for the City of San Diego to provide for their legal representation consistent with the Resolution of Indemnification approved by the City Council on November 18, 2002 (Resolution Number R-297335) or the provisions of Government Code Section 995 (defense of any civil action on account of an act or omission in the scope of his or her employment as an employee of the City). The City Manager has requested the law firm of Procopio Cory Hargreaves and Savitch to provide a legal analysis of the City's defense obligations.

The firm's reports on these two cases have been prepared, and are otherwise subject to the Attorney-Client Privilege and the protection of the Attorney Work-Product Doctrine. Therefore, they can not be released without the City Council first waiving those protections. In order to allow a public discussion of the representation requests, which are included on this agenda as Supplemental Items S502 and S503, the City Manager is requesting that the City Council waive the applicable privileges for the reports.

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ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S502: Provision of Defense for Defendants in Case No. GIC 850246 – People v. Grissom, et al.

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-)

Declaring that the City of San Diego shall defend, indemnify and hold harmless the individuals named in the Civil Complaint, People of the State of California (Plaintiff) v. Lawrence Grissom; Ronald L. Saathoff; John A. Torres; Sharon K. Wilkinson; Terri A. Webster; Cathy Lexin; Bruce Herring; Loraine Lee Chapin (Case No. GIC 850246);

Directing the City Attorney to prepare the necessary Resolution associated with the action.

CITY MANAGER SUPPORTING INFORMATION:

The San Diego City Attorney has filed a Civil Complaint in the Superior Court of California under the Political Reform Act of 1974. The Complaint (People of The State of California (Plaintiff) v. Lawrence Grissom; Ronald L. Saathoff; John A. Torres; Sharon K. Wilkinson; Terri A. Webster; Cathy Lexin; Bruce Herring; Loraine Lee Chapin (Defendants - Case No. GIC 850246) relates to actions of specific members of the Board of Administration of the San Diego City Employees' Retirement System and requests "recovery of economic benefit wrongfully received and injunctive relief setting aside official action" of the Board.

A request has been tendered on behalf of the defendants named in this action for the City of San Diego to provide for their legal representation consistent with the Resolution of Indemnification approved by the City Council on November 18, 2002 (Resolution Number R-297335) or the provisions of Government Code Section 995 (defense of any civil action on account of an act or omission in the scope of his or her employment as an employee of the City). Government Code Section 995.2.b specifies that upon receiving a written request, the public entity shall, within 20 days, inform the employee whether a defense will be provided.

At the request of the City Manager, the law firm of Procopio Cory Hargreaves and Savitch has prepared a legal analysis of the City's defense obligations for the named defendants in the case. The report is subject to Attorney Client Privilege.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S502: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

Based on the firm's assessment the City Manager requests that the City Council make a determination whether the City will declare its intent to defend, indemnify and hold harmless the individuals named in the civil complaint based on the findings of the report.

If the Council declares the intent to provide a defense, the City Manager will retain and oversee outside Counsel up to his authorization limit of \$250,000.

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ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S503: Provision of Defense for San Diego City Employee's Retirement System
(SDCERS) Board of Administration in Cross Complaint Case No. GIC 841845.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-)

Declaring that the City of San Diego shall defend, indemnify and hold harmless the 21 individuals named in the Civil Cross-Complaint, San Diego City Employees' Retirement System, by and through its Board of Administration, (Plaintiff) v. San Diego City Attorney Michael J. Aguirre; the City of San Diego (Defendants) (Case No. GIC 84145);

Directing the City Attorney to prepare the necessary Resolution associated with the action.

CITY MANAGER SUPPORTING INFORMATION:

The San Diego City Attorney has filed a civil cross-complaint in the Superior Court of California (San Diego City Employees' Retirement System, by and through its Board of Administration, (Plaintiff) v. San Diego City Attorney Michael J. Aguirre; the City of San Diego (Defendants) (Case No. GIC 841845).

The complaint alleges that specific actions of members of the Board of Administration of the San Diego City Employees' Retirement System represent a breach of trust and fiduciary duty, and fraud through both negligent as well as intentional misrepresentation. The suit requests "declaratory relief" on a number of matters including terminating the 1998 MOU with the SDCERS Board and voiding the provisions of Manager's Proposals I and II.

Defendants named in this action have tendered a request for the City of San Diego to provide for their legal representation consistent with the Resolution of Indemnification approved by the City Council on November 18, 2002 (Resolution Number R-297335) or the provisions of Government Code Section 995 (defense of any civil action on account of an act or omission in the scope of his or her employment as an employee of the City). Government Code Section 995.2.b specifies that the public entity shall, within 20 days, inform the employee whether a defense will be provided.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S503: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

At the request of the City Manager, the law firm of Procopio Cory Hargreaves and Savitch has prepared a legal analysis of the City's defense obligations for the named defendants in the case. The report is subject to Attorney Client Privilege. Based on the firm's assessment the City Manager requests that the City Council make a determination whether the City will declare its intent to defend, indemnify and hold harmless the individuals named in the civil complaint based on the findings of the report.

If the Council declares the intent to provide a defense, the City Manager will retain and oversee outside Counsel up to his authorization limit of \$250,000.

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